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The view of indifference in the work of the International Criminal Court

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Abstract: The present paper aims to highlight and connect some legal or non-legal attitudes that have been carried out during the time of the work of the International Criminal Court (ICC). These are negative positions that allow us to speak of indifference to international criminal justice. The ICC from the beginning was connected with the risk of having internal and external attacks in its work by its member states. The manifestations of indifference that have framed the work of the ICC have offered the opportunity to identify many specific problems. Thus we speak of a contemptuous indifference. The reaction to indifference can also be seen as an opportunity given the discriminatory power that seeks to overcome and unmask the problems that already exist, accepting the need for an evolutionary phase of the ICC that is part of the history that progressively develops international criminal justice. This body needs to have confidence and support in its work at all levels for

the coming years.

Keywords: ICC; indifference; international criminal justice; cynism; abuse; role of Prosecutor; ICC; discursive indifference; evolution of international criminal law; solidarity.

Introduction

Speaking of indifference in international law and especially in international criminal law means that we are faced with a complex and shadowy attitude. Evaluating the doctrine of international criminal law we can understand the distinction of characteristics, that is, of the past linked with staticity and of the present with a dynamism that is expressed with the birth of international criminal courts.

The lack of optimism and the disregard of international criminal jurisprudence shows the affirmation that overlaps attitudes and models of similar behaviors that accompany this type of indifference. The basis of insensitivity is incorporated into a form of criticism. This is a polar and often discriminating expression that scares today's scholars.

The continuous behaviors of hypocrisy through a hidden action that does not reflect but feels the skepticism and the attitudes of nihilism appears as cynical indifference (Schopenhauer, 1859). Indifference shifts to forms of action that appear as abuse.

This is a nihilism that is often confused with an ironic rhetoric that is transformed in the long term into an attitude that does not ask questions to the world of international criminal law and that only emphasizes fluid sentences (Passmann, 2019). This is how we understand the measure that fragments indifference as a manifestation that explores contemporary cynicism towards international criminal law.

The concept of indifference in international criminal law

When we talk about indifference in international criminal law we are referring to the concept of nihilism. We say this because for many years international criminal justice has been predominantly linked with the continuous progress of jurisprudence. Indeed, the history experienced from Nuremberg to the *ad hoc* tribunals for the former Yugoslavia and Rwanda has been considered successfully and has supported an iron faith in the progress of international criminal law.

The apex was that of the conference that paved the way for the adoption of the statute of the international Criminal Court (ICC). The words of Kofi Annan (Annan, 1997) concerning the creation of the ICC affirmed a period of extraordinary development for the international criminal law and a path fighting impunity. He claimed that the ICC was a symbol of hope for peace and justice, a promise for universal justice.

Words and expectations of a utopian nature that were considered as parts of the international community that posed a very confident project for the evolution of international law.

The expectations were perhaps utopian despite the fact that the preamble of the ICC statute put an end to impunity. Therefore, the ICC from the moment of its creation was an imminent danger and a risk of a deep fall and indifference. Sloterdijk defined as indifference a state of consciousness and of naive ideologies that already come from the period of enlightenment (Sloterdijk, 1983).

Indifference and expectations for the evolution of international criminal law

The indifference in international criminal justice has to do with a discrepancy in international criminal law. The plurality of authors who are involved in the work of the ICC respect expectations and interests that lead to nihilism and indifference as a reality in international criminal justice. This gap is evident in the eyes of many faithful to international criminal justice, the discrepancy of expectations concerns norms as well as their application.

The overabundance of objectives and expectations connected with the work of the ICC seeks to satisfy deterrence, a production of history collected and told by victims, that

promotes human rights and the end of conflicts (Damaska, 2008).

In practice, the attempt to put an end to a conflict produces a historical basis of documents that identify responsibility and satisfy victims while maintaining and safeguarding the rights of the accused. This is an indisputable reality, an inescapable dyad of expectations that are not only in conflict between various actors but also within the framework of the ICC.

The struggle of excuses and the utopia that is found in international law becomes a reality in international criminal law. Above all concerns the ICC as an indisputable institution.

ICC as a compromise institution

The statute of the ICC is not the same with the Charter of the international military tribunal and/or with the birth of the Nuremberg tribunal. It is a statute elaborated not by victorious powers after conflicts but based on the consensus of different reasonings. The compromise is already found in every negotiation procedure of the ICC. The norms of international law are the result of a compromise.

The indicators of compromise, during the Rome conference, tried to reconcile incompatible ideas persecuted by the ICC. Already the statute in Part II of the ICC relating to jurisdiction, admissibility and applicable law was controversial

(Koskenniemi, 2006) and served as an example. For the states the statute was lying between utopia and apology. A group with similar ideas, such as the United Kingdom, Germany and South Africa imagined the ICC to be a strong and independent institution. United States, instead, were in favor of a limited ICC jurisdiction.

The jurisdiction of the ICC was of universal inspiration. Germany was in favour of a compulsory consent model which in any case was also accepted by the US (Kirsch, Holmes, 1999). The related requirements for the exercise of jurisdiction were included in art. 12 and in the activation mechanisms which were established by art. 13. They constituted the key to a compromise of significant sources of criticism from the commentators of the ICC.

The referrals from the Security Council of the UN and the drafters of the Rome statute had little idea of how the relationship between the ICC and the Security Council is structured (Aloisi, 2013). The compromises reached during the negotiation phase were the result of an obstructionism which accepted the failures in this regard. Even before the conclusion of the conference the idea of a tale of two courts was based on different concepts without precise results (Kirk, 1998).

The birth of the ICC since the conference has accepted many compromises to ensure the support of actors who wanted to

reach the ratification of the signature and the birth of a new institution. The compromise in this case was the result of dissatisfaction. The conference of the ICC was the result of indifference and nihilism. The reactions of carelessness towards the new institution had already emerged from the Rome conference.

Towards the manifestation of indifference in international criminal law

The cynical indifference, that like a peplos circulates at the ICC, has been manifested through different paths and ways. A path of total refusal, which as an institution contemptuous of the abuse of instruments for the statute of the ICC and as part of abusive actors, puts an end to the indifference that comes from the institution itself. Thus, a framework is created where indifference takes on an international legal shape, which explores the imagination of scholars on the subject.

It is spoken of contemptuous indifference to describe the rejection of the ICC as an institution to a form of nihilism and to institutional distrust. It is a type of rejection associated with an active fight against the ICC itself. The US who were never supporters of the ICC are also engaged against them. It was George W. Bush who spoke for a negotiation of over 100 bilateral agreements that prevented states from extraditing

American citizens from the Hague.

Bush in 2022 signed the American Service-Members' Protection Act that allowed the US to use necessary means to obtain the release of American personnel, allies, detainees, prisoners from the ICC, fighting under the name of the “Hague invasion Act” (BBC, 2019). A policy of cooperation that in any case reached the Obama administration. The former National Security Advisor John Bolton has shown his obsession with the ICC by showing and stating that he will leave the ICC on its own path and die in the coming years (Bolton, 2018). He has banned judges and prosecutors from entering the US. The withdrawal of Prosecutor Bensouda’s visa from the US has not found any room for action. The US has not abstained from participating and conducting trials related to amendments to the statute as well as crimes of aggression by exercising its influence.

In 2016, South Africa, Gambia and Burundi have indicated their intention to withdraw through notifications based on Art. 127, par. 1 of the statute of Rome. South Africa and Gambia supported the cause of withdrawal in the face of national protests. Several African member states such as Burundi withdrew from the Rome statute in October of 2017 (Moore, 2017; Coalition for the International Criminal Court, 2019). The reasoning and decisions for withdrawal were different for each state.

The Burundi and Gambia cases are recalled, as well as the fear of incriminating heads of state for international crimes (Seenyonjo, 2017). It is highlighted that within a state it is approved to cease the change of government when the government leadership has to fear legal proceedings. This also applies to the Philippines which has become like a state that withdrew from the statute in March of 2019, that is, when the office of prosecutor opened preliminary investigations for the drug trafficking of the President Duterte.

The situations that are under investigation have led to criminal proceedings for African states. As noted African countries are not permanent members of the Security Council of the UN. This means that they have not voted against referrals to particular situations. Ivory Coast has accepted the jurisdiction of the ICC and especially Art. 12, par. 3 of its statute (Ssenyonjo, 2017). Difficult facts that constitute unaccepted and partially questioned beliefs on the matter.

Abusive indifference

The reference to abusive indifference was not referred to the provisions of the statute that were analyzed in a cynical way. Abusive indifference described the phenomenon of actors using the system internally in a controversial way. The actors were involved with the cooperation that the ICC regime lacks, which

was the tiger without real skin and teeth (Liakopoulos, 2019b). Member states as well as the Security Council of the UN relied on Art. 13 of the statute (Liakopoulos, 2014; Hillebrecht, Straus, 2017; Liakopoulos, 2019a).

The drafters of the statute did not foresee that member states used art. 13, letter a) referring to situations that originated from their own territory. Deferrals and elites of the past embarrassed political opponents and rebel groups. The first self-referral case looked at the situation in Uganda and the crimes of the Lord's Resistance Army in 2003 (Tiemessen, 2016).[1]

The former prosecutor Luis Moreno-Ocampo indicted crimes committed by the Lord's Resistance Army and not by the Ugandan People's Defence Force. A position that led to much criticism regarding the impartiality of the proceedings and the public relations of the prosecutor's office towards Ugandan President Musevini (Fischer, Stefan, 2016).

The prosecutor had to deal with situations that the state is a party to an armed conflict. Cooperation for the state that is self-referral is connected to the purchase of evidence and witnesses. It was, therefore, partial for the proceedings (Tiemessen, 2016; Liakopoulos, 2019c).

In this spirit, the Palestinian situation before the ICC is recalled, which made possible the provision of art. 12, par. 2, letter a)

1See the situation in the Democratic Republic of the Congo and Cote d'Ivoire.

regarding alleged crimes committed on the territory of a member state as well as to citizens of a non-member state. For these reasons, Palestine has filed the relevant declaration, according to Art. 12, par. 3 of the statute, accepting the exercise of the jurisdiction of the ICC even before its accession to the statute in an official manner and after the relevant situation of 15 May 2018.[2] The Israeli Foreign Ministry called Palestine's accession to the court:

"(...) the referral a political, hypocritical and cynical manoeuvre and an *attemptio* as an abuse of the ICC system (…)".[3]

The missile attacks and the use of human shields by Hamas, the killing by Israelis in Gaza and the construction of settlements in the West Bank were the main data for the beginning of the proceeding (Bosco, 2016).

The preliminary examination for the situation in Ukraine in 2022 was included in the declaration of Art. 12, par. 3 of the statute. The referrals from the Security Council of the UN showed that the success in terms of effectiveness for the states was based on cooperation, according to the resolution of Chapter VII. In practice, the opposite happened. It is worth noting the first referral in the situation of Darfur in 2005. The

2ICC, Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute, 15 May 2018, PAL-180515-Ref.

3Palestinian Authority joins the ICC-Israel's response (2015) israel Ministry of Foreign Affairs. Retrieved 26 June 2019: https://mfa.gov.il/MFA/PressRoom/2015/Pages/Palestinian-Authority-joins-the-ICC-israel-response-1-Apr-2015.aspx. Accessed on 10.09.2025.

situation in Darfur led to a relevant statement by the prosecutor who stated:

"(...) hope has increasingly been replaced by disappointment, frustration and even anger (...)" (Bensouda, 2017).

A statement that in practice hid the lack of cooperation through the Security Council of the UN and ICC.[4] Important were the concessions against immunity for American personnel who were involved in war missions, thus preventing the relative veto by the US (Aloisi, 2013). Thus, it turned out that the referral was based on the P5 group, which played a leading role during the Rome conference. The prosecutor issued the relevant arrest warrant for Sudanese President al-Bashir which actually remained pending.

The non exercise of veto power did not fail to achieve further cooperation regarding the situation in Libya, namely the Resolution 1970 (2011).[5] It was considered as an intentional manifestation that obstructs and persecutes a justice called impartial (Fischer, Stefan, 2016).

The UN Security Council has not taken action to address the cooperation between Sudan and Libya for the relative surrender of Al-Bashir and/or Saif Gaddafi. It has overlooked the fact that the referral of a non-member state in itself calls for non-impartial cooperation since the state is not obliged to do so as

4UN Security Council, Resolution 1593, UN Doc S/RES/1593 (31 March 2005).

5UN Security Council, Resolution 1970, UN Doc S/RES/1970 (26 February 2011).

provided for by the statute itself. The referrals did not support logistical, financial and political support (Tiemessen, 2016). The resolutions explicitly exclude the possibility of financing investigations and criminal proceedings that arise from the related referrals.[6]

The situations in Sudan and Libya are accompanied by actions that demonstrate the perception of internal abuses and the rejection of a system that facilitates its own affairs. This is a dynamic of a vicious circle for the ICC. Why? Because with every attack of indifference against it, the level for all the actors that are behind increases and so the levels of independence increase. It is also noted that the African Union that from 2009 to 2011 has abstained from any cooperation with the ICC bringing to relative contempt the arrest warrants that are issued by the prosecutor (Tladi, 2014; Liakopoulos, 2024).

The motivations and the decision of non-cooperation show a direct reaction against the action of the UN Security Council and especially of the Council that responds to the African Union with the referral to the exercise of criminal action. In the Al-Bashir case, he was able to visit about eight states since 2008 without ever being arrested. South Africa, which had been a supporter of the ICC and a subject of pressure to not cooperate

6UN Security Council, Resolution 1593, UN Doc S/RES/1593 (31 March 2005), para. 7; and UN Security Council, Resolution 1970, UN Doc S/RES/1970 (26 February 2011), para. 8.

with the African Union after the ongoing conflict (Boehme, 2017), is also in the game. This is an abusive behavior by an actor that causes an ever-evolving effect of indifference.

The actions of Russia, US and China within the P5 group are characterized by the continuous support for the process of evolution of the international criminal law (Forsythe, 2012). Such actions have as a final goal a cooperation of a political nature. A cooperation that equally demands attention from the UN Security Council as we have seen in Syria and Myanmar.

In these situations the indifference is perceived through the non resolutions coming from the UN Security Council. For the US the trial of its citizens in internationally inspired courts and tribunals shows the support for a double standard. It was clear already from the Rome conference that the US is not able to obtain exemption from jurisdiction for its citizens. Already in 2002 they started to guarantee the immunity of their citizens through the creation of obligations that derive from international agreements, according to art. 98, par. 2, in order to block peacekeeping missions in exchange for protection of their citizens.

Institutional indifference

Institutional indifference seems to be the most dangerous of all since the ICC as an institution tries to use manifestations of

indifference to its advantage. Indifference is connected with attitudes of judicial nature (Forsythe, 2012). There are many cases in this regard (Maogoto, 2004; Guilfoyle, 2019). In 2019, the Ambassador Ozaki has asked to become a part-time judge for personal reasons in the Ntaganda case, after her appointment in the Japanese embassy in Estonia (Mistry, 2017).[7]

Judge Ozaki has revoked her position as ambassador. Her appointment was of a political nature that effectively puts the independence of a judge at the ICC in risk. Each judge involved in the proceedings could present his/her own request taking as an alternative a new trial in fact according to the requirements of Art. 74, par. 1 of the statute of the ICC.

President Eboe-Osuji had at the same time a lawsuit at the OIL in Geneva asking for an increase of his salary that exceeded 200,000 dollars as retroactive compensation, pension (Simons, 2019). The reactions from the staff were obviously endless. This is a discrepancy and humiliation for the ICC itself that had budget problems and that spent a quota on internal litigation.

Judge Ibañez, through a dissenting opinion on the matter, declared his non-acceptance for the appointment of judge Eboe-Osuji as the President. The non-acceptance was seen as a lack of clear and transparent procedures and as an absence of an

7ICC, Prosecutor v. Ntaganda, Annex 1 to the Notification of the Decision of the Plenary of judges pursuant to Article 40 of the Rome Statute of 19 March 2019, ICC-01/04-02/06-2326-Anx1, paras. 3-5.

equitable distribution in the workload (Liakopoulos, 2020).[8] In a joint declaration judges Eboe-Osuji and Hofmanski stated:

"(…) view and regrets that there was no opportunity of previewing the dissent before it was filed (…)" (Liakopoulos, 2020).[9]

Judge Ibañez responded on the matter:

"(…) there was 'no legal basis for the joint declaration, which would amount to a lack of respect for a judicial dissenting vote or opinion (…)" (Liakopoulos, 2024).[10]

A "war", through judges without limits and with unpleasant events that exemplify the behavior of indifference as a process of disqualification against oneself, was noted. The internal procedures of the Chambers were:

"(…) for the Europeans to pay the bills (…) the Africans (…) to provide the suspects and defendants of the court (…)" (Liakopoulos, 2024).[11]

In times of continuous crisis solidarity and leadership is strong since incidents are important creating a leadership framework that does not act in a perfect way. They are defined priorities in a questionable way on personal conflicts and on urgent institutional issues.

8ICC, Prosecutor v. Gbagbo and Blé Goudé, Dissenting Opinion of Judge Luz del Carmen ibañez Carranza of 18 January 2019, ICC-02/11-01/15-1242-Anx1, para. 1.

9ICC, Prosecutor v. Gbagbo and Blé Goudé, Joint Declaration of Judge Eboe-Osuji and Judge Hofmański on the Procedure on the Election of Presiding Judges of 22 January 2019, ICC-02/11- 01/15-1242-Anx2, para. 3.

10ICC, Prosecutor v. Gbagbo and Blé Goudé, Statement of Judge ibáñez Carranza with respect to the joint declaration of the President of the Court and the President of the Appeals Division on the procedure on the election of presiding judges, in relation to her dissenting vote of 24 January 2019, ICC-02/11-01/15-1242-Anx3, paras. 3–4.

11ICC, Prosecutor v. Lubanga, Annex 1 to the Requête urgente de la Défense aux fins de récusation de M. Le Juge Marc Perrin de Brichambaut of 10 April 2019, ICC-01/04-01/06-3451-Anx1.

Damage to reputation is not underestimated especially for the situation that finds at the ICC every initiative that monitors and interprets a potential signal of its own failure. The attention towards a cynical indifference of its own institution and especially for the magistrates are incidents of a path that feel the levels of dissatisfaction of trust towards the ICC.

Discursive indifference

After twenty years of work of the ICC a crisis has been noted (Powderly, 2019). A critique of indifference is noted in the social media sector and in the sphere of tweets that criticize the work of the ICC without academic elements. It is a collaborative indifference that shows the loss of trust and the will of the academic society to show faith in objective discussions.

It is noted the discourse on the cases of Laurent Gbagbo and Charles Blé Goudé. Acquitted in January 2019 since the prosecutor did not demonstrate elements of a constitutive nature fundamental to the related crimes charged.[12]

The same line of thought is noted few months after the controversial acquittal of Jean-Pierre Bemba.[13]. A heated debate on twitter and on legal blogs arose by lawyers since the written

12ICC Trial Chamber i acquits Laurent Gbagbo and Charles Blé Goudé from all charges (2019) ICC press release. Retrieved 26 June 2019, from https://www.ICC-cpi.int/Pages/item.aspx? Name¼pr1427 Accessed on 10.09.2025.

13ICC, Prosecutor v. Bemba, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute' of 8 June 2018, ICC-01/05-01/ 08-3636-Red.

reasons for the sentence were not published.[14] The general verdict was devastating and highlighted the inability of the ICC to convict defendants who were not rebels.[15]

Convictions were the indicator of success for the ICC. This is an argument that does not concern national courts. The number of related convictions from the ICC makes acquittals painful and linked with terms of legitimacy. There is also the question of investigations from the Office of the Prosecutor to investigate all cases in a sufficient and solid way that does not always have an easy result, to fight impunity.

The criticisms show an approach that affirms the fairness of a criminal justice system that judges acquittals and not convictions (Goldstone, 2019) through a strengthening of continuous faith and credibility of the ICC. This debate is exemplary for some (Heller, 2019a). It also shows a picture of reactions that are premature for the ICC. The levels of indifference are many as are the comments.

The language and tones used leave no room for other nuances. Being indifferent is now in fashion. In recent years the non-operation was seen as a collective perception of a realism that

14A summary of the immediate reactions to the acquittal can be found at https://twitter.com/Barrie_Sander/status/1085140840199213057 Accessed on 10.09.2025.

15A summary of the immediate reactions to the acquittal can be found at https://twitter.com/Barrie_Sander/status/1085140840199213057 Accessed on 10.09.2025.

leaves no room for hope but can improve as a hypothesis (Sloterdijk, 1983).

This is a self-conception that is part of a critical spirit of the international criminal law that becomes a mainstream for the evolution of criminal justice. Indifference is scary if it is found within the channels that cooperate and carry out investigations and publications in this regard. These are indifferences of international criminal justice that take different and often complex forms. Indifference for the ICC is a reality. But what is important is that it comes from domestic sources of an abusive nature and from external institutions, namely those that are contemptuous and discursive. The faithful allies at the ICC reveal the sources of these problems. The examples we have reported so far are not isolated.

The context of complex patterns of indifference are many at internal and external levels. Each actor assumes its own role. It has different interests that interact with each other. These are part of a broad picture that is independent and in continuous evolution. The ICC clearly shows its vulnerability to indifference, as a paradigm of enlightened consciousness and victim of the same institution in time.

Following indifference as a *modus vivendi* in international criminal justice

Indifference can perhaps be seen as an opportunity that unmasks existing problems. Abusiveness refers to the work of the prosecutor especially when it deals with heads of state as perpetrators of high-level crimes. The ICC presents itself as a mixed court that faces unprecedented external challenges. It considers the outcome as in the Bemba, Gbagbo and Blé Goudé cases, as:

"(…) intrinsic tensions surrounding the exercise of the Office's mandate (…) an environment of even more difficult cooperation and an openly hostile approach towards the Office (…)".[16]

Strategic objective of the ICC is to fight impunity and perpetrators of crimes. Thus, ensuring a broad accountability in subsequent cases, against defendants of a higher level. The strategy of accusation seems to have a pyramidal basis that indicates the attacks of indifference that directly influence the reactions and the change of a policy that recognizes the risk of an unfair perception that the same office of the prosecutor considers as a low-level objective towards the top.

The Palestine case and the related problems that arose are remembered as an indifferent exposure before the statute of the

16ICC, Strategic Plan 2019-2021, Office of the Prosecutor of 17 July 2019, paras. 5, 5a, 8c and 11.

ICC without leading to a solution (Liakopoulos, 2022). The Palestinian authorities wanted to control the extent of the preliminary examination using a diplomatic act as a negotiation strategy. The prosecutor attributed in an important way without giving further weight that the preliminary examination is not unilateral stating:

"(...) continuous violence, perpetrated by actors from both sides, on the Gaza border with Israel (...)" (Bensouda, 2018).

The preliminary examinations were different for the African states since some of them led to criminal proceedings (Liakopoulos, 2023). The UN Security Council and some state policies did not want further postponements since the ICC could not do anything about it. The possibility of referrals to the UN Security Council has been accepted as a mistake and as a detachment from the mechanism that represents an emancipation from the claims of selective justice and as responsibility for failure in this type of situation. The ICC struggles to find a reaction to the indifference that some parties show.

The Appeal Chamber in the Al-Bashir case reacted and defined in this regard:

"(…) hastily formulated comments (…) the commentator has read the judgment in question (…) regardless of their accuracy (…) even going so far as to cite professional ethics and complaining about a lack of honesty, integrity and fairness (…)" (Liakopoulos, 2020).[17]

17ICC, Prosecutor v. Al Bashir, Q&A regarding Appeals Chamber's 6 May 2019 Judgment in the Jordan Referral re Al-Bashir Appeal of May 2019, ICC-PiOS-Q&A-

Indifference as a mode of solidarity and authority

The reaction to the work of the ICC contributes many times to the path of indifference. Israel has seized the opportunity as we have seen to consider the related investigations at the ICC as a threat. It has released Palestinian prisoners in exchange for Palestine's membership in the ICC. It has also started an international campaign effort to convince some states to cut their funding (Kittrie, 2016). Israel has inadvertently contributed to the work and birth of the ICC as an institution.

The National Security Advisor of the United States has dedicated and considered for the US the work of the ICC as irrelevant and contrary. Every act of contempt is potentially beneficial. The situation in Palestine decisively demonstrates its resistance to political reactions from the great powers, a sign of leadership of indifference that cannot maintain its credibility to survive. The Prosecutor's Office found reasonable grounds to proceed with a search of the situation in Palestine, under Article 53, paragraph 1 of the statute, before having requested a related waiver, under Article 19, paragraph 3 of the statute:

"(…) the unique and highly controversial legal and factual issues related to this situation (…)" (Bensouda, 2018).

The abuse of indifference allows the ICC bodies themselves to move forward and face criticisms. The decision to reject an

investigation into the situation in Afghanistan served the interests of justice.[18] It shows that it is difficult to officially apologize for future decisions as well as to emancipate inherent challenges of the statute given the involvement of actors that do not belong to the list of its member states.

The reaction of professionals to its decisions is unanimous and devastating. Pragmatic considerations are understandably based on a difficult path for indifference. The appeal stage for example offered the ICC the opportunity to change this type of impression. It seems that this has found a basis when on 5 March 2020, the Appeals Chamber:

"(...) unanimously decided to authorise the opening of an investigation (…)".[19]

The new Trump administration has openly threatened the ICC personnel, who were involved in the decision that goes against the American leadership (Pompeo, 2020). The struggle of indifference also strengthens the internal belonging towards the path of unity and solidarity. The support of the main global players is important for the ICC and the lack of support from the US is revealed as a positive path of success.

18ICC, Situation in the islamic Republic of Afghanistan, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an investigation into the Situation in the islamic Republic of Afghanistan of 12 April 2019, ICC-02/17-33.

19ICC, Situation in the islamic Republic of Afghanistan, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the islamic Republic of Afghanistan of 5 March 2020, ICC-02/17 OA4.

The certainty for the ICC survives the withdrawal of an openly financing member state like the US. Attacks, withdrawals by member states lead to expressions of solidarity from member states that serve as supporting states for the ICC, that is struggling towards a continuing survival support (Moorehead, Whiting, 2018).

The years are ripe

Indifference now has another aspect that of unmasking for the ICC what it does not need. Many rules of the statute of the ICC are applied with extreme difficulty. The problems are solved as a manifestation of indifference that allows the ICC to evolve by proceeding with an approach of forward backwards steps.

The objectives are mentioned (Damaska, 2008) as an interpretation that reduces mediocrity and emphasizes the general spirit of international criminal justice (Schabas, 2013). The attitude of indifference was born even before the birth of the ICC (Biaggini, 2013). We can see the ICC as a step towards the road of a long and growing path. There is no court without mistakes, perfect both at national and international level.

Linear progress is important for the ICC as a position of a framework to a criminal justice system that shows that the prosecutor relies on a discretion in the matter of accusation in a geopolitical framework. Non-member states and opponents of

the work of the ICC such as the US, have stopped continuing debates and problems thus supporting ICC's activities even in a partial way (Bosco, 2016). This strategy has allowed the ICC to remain in the comfort zone revealing every dangerous end of the past. The problems will certainly be many that the ICC will find and issue arrest warrants against heads of state. The opposition will begin to grow.

Conclusion

From the previous paragraphs we have understood that the ICC is in a moment of deep crisis. A crisis that comes to the end and/or to the beginning of evolution and progress of the development of international criminal justice.

Indifference regards this phase as a way out of the past towards the future. With a wrong way many decisions have had a basis of indifference as a modern interpretation of the development of international criminal law. It is a term that respects a philosophical movement, namely the ancient indifference that includes rationality, self-sufficiency and precision guiding circumstances to a background of states that have developed and created the ICC years ago (Navia, 1976).

In author's opinion the ICC must transform itself from the defaiances of the past that are interpreted as indifferences. This is an opportunity that creates from the beginning the work of the

ICC and is focused on realistic decisions within the spirit of “ancient indifference” and not of today's world of continuous crisis. The fight against indifference for the next few years is a reality. The court should fight to win by putting the fight against impunity at the forefront.

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